



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

November 2, 2009

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Roberto Bharat**
Tax Registry No. 927925
Military and Extended Leave Desk
Disciplinary Case Nos. 82046/06, 82935/07, 83737/08,
84163/08, 84403/08 & 84877/09

The above named member of the service appeared before Assistant Deputy Commissioner John Grappone on June 15, 2009 and was charged with the following:

Disciplinary Case No. 82046/06

1. Said Police Officer Roberto Bharat, assigned to the 103 Precinct, while off duty, on or about July 8, 2006, at approximately 0500 hours, at a location known to this Department, in Bronx County, with intent to cause physical injury to a person known to this Department (Nadia Latchman), caused such injury, a bleeding laceration to said person, by striking said person in the face with a cell phone and/or said officer's hands.

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 120.00 (1) ASSAULT IN THE THIRD DEGREE

2. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about July 8, 2006, at a location known to this Department, in Bronx County, with intent to harass, annoy or alarm a person, identity known to this Department (Nadia Latchman) struck said person. (*As amended*)

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 240.26 (1) – HARASSMENT IN THE SECOND DEGREE

Disciplinary Case No. 82935/07

1. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about April 28, 2007, at a location known to this Department, in Queens County, did wrongfully and without just cause, cause physical injury to another person, identity known to this Department.(Ninesh Sutraban)

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 120.00 (1) – ASSAULT IN THE THIRD DEGREE

P.O. BHARAT, ROBERTO

**DISCIPLINARY CASE NOS. 82046/06, 82935/07,
83737/08, 84163/08, 84403/08 & 84877/09**

2. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about April 28, 2007, at a location known to this Department, in Queens County, with intent to harass, annoy or alarm a person, identity known to this Department (Ninesh Sutraban), struck said person. (*As amended*)

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 240.26 (1) – HARASSMENT IN THE SECOND
DEGREE

3. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about April 28, 2007, at a location known to this Department, in Queens County, after being involved in an unusual police occurrence, did fail and neglect to request the response of the patrol supervisor, precinct of occurrence, as required. (*As amended*)

PG 212-32 Page 1, Paragraph 2 – COMMAND OPERATIONS

Disciplinary Case No. 83737/08

1. Said Police Officer, Roberto Bharat, while assigned to Manhattan Court Section, while on sick report, on or about July 20, 2007, at a location known to this Department, in Queens County, was wrongfully and without just cause absent from said officer's residence without permission of said officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

PG 205-01 Page 2, Paragraph 4 – REPORTING SICK, PERSONNEL MATTERS

2. Said Police Officer, Roberto Bharat, while assigned to Manhattan Court Section, while on sick report, on or about July 24, 2007, at a location known to this Department, in Queens County, was wrongfully and without just cause absent from said officer's residence without permission of said officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

PG 205-01 Page 2, Paragraph 4 – REPORTING SICK, PERSONNEL MATTERS

3. Said Police Officer, Roberto Bharat, while assigned to Manhattan Court Section, while on sick report, on or about November 8, 2007, at a location known to this Department, in Queens County, was wrongfully and without just cause absent from said officer's residence without permission of said officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

PG 205-01 Page 2, Paragraph 4 – REPORTING SICK, PERSONNEL MATTERS

Disciplinary Case No. 84163/08

1. Said Police Officer, Roberto Bharat, while assigned to Manhattan Court Section, while off-duty, on or about October 24, 2007, at a location known to the Department, in Queens County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Police Officer engaged in a physical altercation with a person, identity known to the Department. (Lisa Mohammed)

PG 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

2. Said Police Officer, Roberto Bharat, while assigned to Manhattan Court Section, while off-duty, on or about October 24, 2007, at a location known to the Department, in Queens County, having been involved in a police incident, did thereafter fail to promptly notify the desk officer, precinct of occurrence, as required.

PG 212-32 Page 1, Page 2 – OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE SERVICE

Disciplinary Case No. 84403/08

1. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off-duty, on or about August 8, 2008, at a location known to this Department, in Queens County, did wrongfully and without just cause, cause physical injury to another person, identity known to the Department. (Ninesh Sutraban)

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 120.00 (1) – ASSAULT IN THE THIRD DEGREE

2. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about August 8, 2008, at a location known to this Department, in Queens County, with intent to harass, annoy or alarm another person did strike, shove, kick or otherwise subject such other person to physical contact, or attempt or threaten to do the same. (Ninesh Sutraban)

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 240.26 (1) – HARASSMENT IN THE SECOND
DEGREE

3. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about August 8, 2008, at a location known to this Department, in Queens County, did consume alcohol to the extent that said Officer was unfit for duty.

PG 203-04 Page 1, Paragraph 2 – FITNESS FOR DUTY

P.O. BHARAT, ROBERTO

**DISCIPLINARY CASE NOS. 82046/06, 82935/07,
83737/08, 84163/08, 84403/08 & 84877/09**

4. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about August 8, 2008, at a location known to this Department, in Queens County, having been involved in an unusual police occurrence did fail and neglect to request the response of the patrol supervisor, precinct of occurrence, as required.

PG 212-32 Page 1, Paragraph 2 – COMMAND OPERATIONS

5. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about August 8, 2008, at a location known to this Department, in Queens County, having been involved in an unusual police occurrence did fail to remain at the scene of the incident when feasible and consistent with personal safety, as required.

PG 212-32 Page 1, Paragraph 1 – COMMAND OPERATIONS

6. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about August 8, 2008, at a location known to this Department, in Queens County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Officer did engage in a physical altercation with an individual, identity known to the Department (Ninesh Sutraban). (*As amended*)

PG 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT,
GENERAL REGULATIONS

7. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about August 8, 2008, at a location known to this Department, in Queens County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Officer did take the cellular phone of an individual, identity known to the Department (Ninesh Sutraban), in order to prevent said individual from dialing 911. (*As amended*)

PG 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT,
GENERAL REGULATIONS

Disciplinary Case No. 84877/09

1. Said Police Officer Roberto Bharat, assigned to Military and Extended Leave Desk, on or about January 2, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer wrongfully duplicated and displayed a duplicate New York City Police Department parking plaque without permission or authority to do so.

PG 203-10 Page 1, Paragraph 5 – GENERAL REGULATIONS
NYC Administrative Code Section 14-108

P.O. BHARAT, ROBERTO

**DISCIPLINARY CASE NOS. 82046/06, 82935/07,
83737/08, 84163/08, 84403/08 & 84877/09**

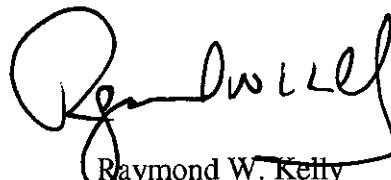
In a Memorandum dated September 2, 2009, Assistant Deputy Commissioner Grappone found the Respondent Guilty in part and Not Guilty in part of Specification No. 1 and Guilty of Specification No. 2 in Disciplinary Case No. 82046/06; Not Guilty of Specification Nos. 1 and 2 and Guilty of Specification No. 3 in Disciplinary Case No. 82935/07; accepted Respondent Bharat's Pleading Guilty to all Specifications in Disciplinary Case No. 83737/08; Not Guilty of Specification No. 1 and Guilty of Specification No. 2 in Disciplinary Case No. 84163/08; Not Guilty of Specification Nos. 1, 2, 6 and 7 and Guilty of Specification Nos. 3, 4 and 5 in Disciplinary Case No. 84403/08, and Guilty of the sole Specification in Disciplinary Case No. 84877/09.

Having read the Memorandum and analyzed the facts of these instant matters, I approve the findings, but disapprove the penalty. Under the totality of the facts and circumstances, with the number of separate incidents, complainants, and types of misconduct involved in these matters, I agree with Assistant Deputy Commissioner Grappone's pronouncement that Respondent Bharat does not possess the type of character and discipline that is basic and necessary to justify the trust that the Department places in its uniformed members of the service.

Therefore, I agree that Respondent Bharat's separation from the Department is required. However, although Assistant Deputy Commissioner Grappone recommends that Respondent Bharat be summarily dismissed, I will permit an alternative manner of separation from the Department at this time.

It is therefore directed that a post-trial vested-interest retirement agreement be implemented with the Respondent. In consideration of such, Respondent Bharat is to be immediately suspended without pay for 30 days, plus forfeit an additional 60 Vacation days, plus forfeit all remaining accrued time/leave balances, plus forfeit all prior suspension without pay days already served, plus remain on a suspended-duty status until his final date of separation from the Department, plus be immediately placed on a One-Year Dismissal Probation period.

Such vested-interest retirement shall also include Respondent Bharat's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If Respondent Bharat does not agree to the terms of this vested-interest retirement as noted, this Office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY.**


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :

- against - :

Police Officer Roberto Bharat :

Tax Registry No. 927925 :

Military and Extended Leave Desk :

FINAL

ORDER

OF

DISMISSAL
-----X

Police Officer Roberto Bharat, Tax Registry No. 927925, Shield No. 1718, Social Security No. [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 82046/06, 82935/07, 83737/08, 84163/08, 84403/08 & 84877/09, as set forth on form P.D. 468-121, dated July 14, 2006, May 1, 2007, January 30, 2008, June 13, 2008, August 12, 2008 & January 6, 2009, and after a review of the entire record, has been found Guilty in part and Not Guilty in part of Specification No. 1; has been found Guilty of Specification No. 2 in Charges and Specifications numbered 82046/06, Specification No. 3 in Charges and Specifications numbered 82935/07, Specification No. 2 in Charges and Specifications numbered 84163/08, Specification Nos. 3, 4, and 5 in Charges and Specifications numbered 84403/08; having pleaded Guilty to Charges and Specifications numbered 83737/08 and 84877/09, has been found Guilty of those Specifications; has been found Not Guilty of Specification No. 1 and 2 in Charges and Specifications numbered 82935/07,

COURTESY • PROFESSIONALISM • RESPECT

Specification No. 1 in Charges and Specifications numbered 84163/08 and Specification Nos. 1, 2, 6, and 7 in Charges and Specifications numbered 84403/08.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Roberto Bharat from the Police Service of the City of New York.

RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE:



POLICE DEPARTMENT

-----X
In the Matter of the Charges and Specifications : Case Nos. 82046/06,
82935/07, 83737/08,
- against - : 84163/08, 84403/08
& 84877/09
Police Officer Roberto Bharat :
Tax Registry No. 927925 :
Military and Extended Leave Desk :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable John Grappone
Assistant Deputy Commissioner - Trials

APPEARANCE:

For the Department: Mark Berger, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, NY 10038

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

The above-named member of the Department appeared before me on June 15, June 17, and June 22, 2009, charged with the following:

Disciplinary Case No. 82046/06

1. Said Police Officer Roberto Bharat, assigned to the 103 Precinct, while off duty, on or about July 8, 2006, at approximately 0500 hours, at a location known to this Department, in Bronx County, with intent to cause physical injury to a person known to this Department (Nadia Latchman)¹, caused such injury, a bleeding laceration to said person, by striking said person in the face with a cell phone and/or said officer's hands.

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 120.00 (1) ASSAULT IN THE THIRD DEGREE

2. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about July 8, 2006, at a location known to this Department, in Bronx County, with intent to harass, annoy or alarm a person, identity known to this Department (Nadia Latchman) struck said person. (*As amended*)

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 240.26 (1) – HARASSMENT IN THE
SECOND DEGREE

Disciplinary Case No. 82935/07

1. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about April 28, 2007, at a location known to this Department, in Queens County, did wrongfully and without just cause, cause physical injury to another person, identity known to this Department.(Ninesh Sutraban)

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 120.00 (1) – ASSAULT IN THE
THIRD DEGREE

2. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about April 28, 2007, at a location known to this Department, in Queens County, with intent to harass, annoy or alarm a person, identity known to this Department (Ninesh Sutraban), struck said person. (*As amended*)

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 240.26 (1) – HARASSMENT IN THE
SECOND DEGREE

¹ The identity of the individuals, not named in the original specifications, are hereby added by the Court to distinguish the "person known to this Department" in each of the allegations made against the Respondent.

3. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about April 28, 2007, at a location known to this Department, in Queens County, after being involved in an unusual police occurrence, did fail and neglect to request the response of the patrol supervisor, precinct of occurrence, as required. (*As amended*)

PG 212-32 Page 1, Paragraph 2 – COMMAND OPERATIONS

Disciplinary Case No. 83737/08

1. Said Police Officer, Roberto Bharat, while assigned to Manhattan Court Section, while on sick report, on or about July 20, 2007, at a location known to this Department, in Queens County, was wrongfully and without just cause absent from said officer's residence without permission of said officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

PG 205-01 Page 2, Paragraph 4 – REPORTING SICK, PERSONNEL MATTERS

2. Said Police Officer, Roberto Bharat, while assigned to Manhattan Court Section, while on sick report, on or about July 24, 2007, at a location known to this Department, in Queens County, was wrongfully and without just cause absent from said officer's residence without permission of said officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

PG 205-01 Page 2, Paragraph 4 – REPORTING SICK, PERSONNEL MATTERS

3. Said Police Officer, Roberto Bharat, while assigned to Manhattan Court Section, while on sick report, on or about November 8, 2007, at a location known to this Department, in Queens County, was wrongfully and without just cause absent from said officer's residence without permission of said officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

PG 205-01 Page 2, Paragraph 4 – REPORTING SICK, PERSONNEL MATTERS

Disciplinary Case No. 84163/08

1. Said Police Officer, Roberto Bharat, while assigned to Manhattan Court Section, while off-duty, on or about October 24, 2007, at a location known to the Department, in Queens County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Police Officer engaged in a physical altercation with a person, identity known to the Department. (Lisa Mohammed)

PG 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT –
PROHIBITED CONDUCT

2. Said Police Officer, Roberto Bharat, while assigned to Manhattan Court Section, while off-duty, on or about October 24, 2007, at a location known to the Department, in Queens County, having been involved in a police incident, did thereafter fail to promptly notify the desk officer, precinct of occurrence, as required.

PG 212-32 Page 1, Page 2 – OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE SERVICE

Disciplinary Case No. 84403/08

1. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off-duty, on or about August 8, 2008, at a location known to this Department, in Queens County, did wrongfully and without just cause, cause physical injury to another person, identity known to the Department. (Ninesh Sutraban)

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 120.00 (1) – ASSAULT IN THE
THIRD DEGREE

2. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about August 8, 2008, at a location known to this Department, in Queens County, with intent to harass, annoy or alarm another person did strike, shove, kick or otherwise subject such other person to physical contact, or attempt or threaten to do the same. (Ninesh Sutraban)

PG 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT
NYS PENAL LAW SECTION 240.26 (1) – HARASSMENT IN THE
SECOND DEGREE

3. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about August 8, 2008, at a location known to this Department, in Queens County, did consume alcohol to the extent that said Officer was unfit for duty.

PG 203-04 Page 1, Paragraph 2 – FITNESS FOR DUTY

4. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about August 8, 2008, at a location known to this Department, in Queens County, having been involved in an unusual police occurrence did fail and neglect to request the response of the patrol supervisor, precinct of occurrence, as required.

PG 212-32 Page 1, Paragraph 2 – COMMAND OPERATIONS

5. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about August 8, 2008, at a location known to this Department, in

Queens County, having been involved in an unusual police occurrence did fail to remain at the scene of the incident when feasible and consistent with personal safety, as required.

PG 212-32 Page 1, Paragraph 1 – COMMAND OPERATIONS

6. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about August 8, 2008, at a location known to this Department, in Queens County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Officer did engage in a physical altercation with an individual, identity known to the Department (Ninesh Sutraban). *(As amended)*

PG 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT -- PROHIBITED
CONDUCT, GENERAL REGULATIONS

7. Said Police Officer Roberto Bharat, assigned to Manhattan Court Section, while off duty, on or about August 8, 2008, at a location known to this Department, in Queens County, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Officer did take the cellular phone of an individual, identity known to the Department (Ninesh Sutraban), in order to prevent said individual from dialing 911. *(As amended)*

PG 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT -- PROHIBITED
CONDUCT, GENERAL REGULATIONS

Disciplinary Case No. 84877/09

1. Said Police Officer Roberto Bharat, assigned to Military and Extended Leave Desk, on or about January 2, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer wrongfully duplicated and displayed a duplicate New York City Police Department parking plaque without permission or authority to do so.

PG 203-10 Page 1, Paragraph 5 – GENERAL REGULATIONS
NYC Administrative Code Section 14-108

The Department was represented by Mark Berger, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges in Disciplinary Case Nos. 83737/08 and 84877/09 and a plea of Not Guilty to the subject charges in Disciplinary Case Nos. 82046/06, 82935/07, 84163/08 and 84403/08.

A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case Nos. 83737/08 and 84877/09

The Respondent, having pleaded Guilty, is found is Guilty as charged.

Disciplinary Case No. 82046/06

The Respondent is found Guilty in part and Not Guilty in part of Specification No. 1 and Guilty of Specification No 2.

Disciplinary Case No. 82935/07

The Respondent is found Not Guilty of Specification Nos. 1 and 2 and Guilty of Specification No. 3.

Disciplinary Case No. 84163/08

The Respondent is found Not Guilty of Specification No. 1 and Guilty of Specification No. 2

Disciplinary Case No. 84403/08

The Respondent is found Guilty of Specification Nos. 3, 4, and 5. He is found Not Guilty of Specification Nos. 1, 2, 6, and 7.

SUMMARY OF EVIDENCE

The Department's Case

The Department called Dolores Jackson, Captain Timothy Eriksen, Sergeant Kevin Mosiurchak, Police Officer Peter Paese, Sergeant Michael Childs, Lieutenant

Michael Tarpey, Sergeant Donald Kipp, Police Officer Vincent Commisso, Police Officer Dominick Apuzzo, and Sergeant Saverio Fanelli as witnesses.

Dolores Jackson

Disciplinary Case No. 82046/06

Jackson lives on St. Ann's Avenue in the Bronx. She testified that at approximately 5:00 a.m. on July 8, 2006, she awoke to the sound of a car screeching loudly outside. When she looked out her window to see what had happened, she observed a young woman (subsequently identified as Nadia Latchman) in a gown hanging out of a car. Latchman was screaming "like someone was murdering her." Because a tree was blocking her view, Jackson walked from her bedroom to her living room window, where she was able to see Latchman fall out of the car with her bags. According to Jackson, a man (subsequently identified as the Respondent) then got out of the car, grabbed Latchman by the dress, threw her against a fence, grabbed her by the throat, and started punching her in the face. At that point, Jackson called 911.

Before the police responded, Latchman started to fight back against the Respondent. Latchman started to get away, but the Respondent followed her and grabbed her from behind. The Respondent pressed Latchman up against the fence again, but this time he stroked her hair. When Latchman threw something over the fence, the Respondent climbed over to retrieve it. It was around that time that the police arrived at the scene and apprehended the Respondent. Jackson testified that she was able to clearly see what took place on the street outside of her apartment that morning, and she testified about the incident in Criminal Court in September 2006.

On cross-examination, Jackson testified that in 2006 she had been prescribed anti-depressant medication. She stopped taking the medication because it did not agree with her. She did not drink any alcohol the night before the incident, and she does not have any problems with her memory. Because it was the summertime, the sun was already rising at the time of the incident. Jackson could not see if Latchman sustained injuries. She saw Latchman swing at the Respondent, but she could not tell if Latchman used an open or closed fist. When the Respondent started to hug Latchman, Latchman slapped and pushed him away. Jackson stated that she has never been the victim of domestic violence, but she has friends and family who have experienced domestic violence, and she is particularly sensitive to it.

Captain Timothy Eriksen

Disciplinary Case No. 82935/07

Eriksen is currently assigned to Patrol Borough Queens South. He testified that while working as the duty captain on April 28, 2007, he interviewed Ninesh [REDACTED] (hereafter Ninesh) about an off-duty incident involving the Respondent. Ninesh, who appeared to be intoxicated during the interview, told Eriksen that he had been assaulted by his cousin, the Respondent. Ninesh was brought by ambulance to Queens General Hospital. Eriksen stated that he could not remember exactly what injuries he observed but, according to a report he prepared about the incident, Ninesh sustained contusions to his head, left arm, and left leg.

[Department's Exhibits (DX) 7 and 7A are the tape and transcript of three 911 calls made about the April 28, 2007 incident. In the first call, a man told the operator that

he saw two men fighting. One man pushed the other down to the ground. In the second call, a woman told the operator that she saw one man beat up another man and throw him on the side of the road. The police were already at the scene, but the perpetrator was fleeing. She thought an ambulance should be called to the location. In the third call, a male requested that an ambulance be sent to the location to aid an injured man.]

Disciplinary Case No. 84163/08

Eriksen testified that while working as the duty captain on October 24, 2007, he conducted a telephone interview with Lisa Mohammed, who had been involved in a dispute with her boyfriend, the Respondent. Mohammed told Eriksen that the Respondent came to her house and became upset because there was another man there. The Respondent proceeded to knock over a television and push Mohammed to the bed.

Disciplinary Case No. 84403/08

Eriksen testified that while working as the duty captain on August 8, 2008, he interviewed Ninesh at Jamaica Hospital about another off-duty dispute with the Respondent. Ninesh told Eriksen that during the course of an argument the Respondent punched him in the chest, causing pain to his chest. Ninesh appeared to be intoxicated at the time of the interview. The Respondent also appeared intoxicated when Eriksen saw him the same day at the Investigations Unit. Eriksen reviewed and signed a Supervisor's Fitness For Duty Report indicating that at 8:00 a.m. that day, he observed that the Respondent had glassy/watery eyes. Eriksen stated that although no box was checked on the line labeled "Odor of Alcohol on Breath," the Respondent was in fact giving off a

strong odor of alcohol. Eriksen explained that it was, therefore, a careless oversight that no box was checked. He further explained that after 24 years in the Department he knows an intoxicated person when he sees one, and he is confident that the Respondent was unfit for duty at the time that he signed the report. [DX 10 is a copy of the report signed by Eriksen. It indicates that the Respondent's face color was normal, clothes were neat, attitude was cooperative, balance/coordination was steady, and speech was normal.]

[DX 8, 8A, and 8B are the tape and transcripts of two 911 calls made by Ninesh on August 8, 2008. In the first call, Ninesh told the operator that he had just been beaten up by the Respondent, and he asked for police and medical assistance. In the second call, Ninesh told the operator that when the Respondent realized that he (Ninesh) was going to call the police, the Respondent took his cell phone and left the scene. Ninesh also told the operator that he had been drinking and that his knee hurt so much he could not stand.]

On cross-examination, Eriksen testified that the Supervisor's Fitness for Duty Report that he signed was actually prepared by Sergeant Kevin Mosiurchak. According to the report, the Respondent was cooperative and neat. Other than the glassy/watery eyes and the final determination that the Respondent was unfit for duty, none of the checked boxes on the report indicated intoxication. Eriksen stated that Ninesh was lucid during the August 8, 2008 interview. Eriksen's recollection of the incidents involving the Respondent is vague, and he needs to rely on his notes to refresh his memory.

Sergeant Kevin MosiurchakDisciplinary Case No. 82935/07

Mosiurchak, a 17-and-a-half-year member of the Department, is currently assigned to Patrol Borough Queens South Investigations Unit. He first met the Respondent when they were both assigned to the 103 Precinct. Although they were not friends, there was no animosity between them. He testified that on April 28, 2007, he was assigned to investigate an incident involving the Respondent and his cousin, Ninesh. Mosiurchak interviewed Ninesh and took photographs of him that day. Mosiurchak stated that Ninesh was intoxicated but coherent at the time, and he (Mosiurchak) was able to get clear answers during the interview. According to Mosiurchak, Ninesh was in pain.

[DX 5A through G are the photographs that Mosiurchak took of Ninesh on the day of the incident. 5A shows Ninesh's face, 5B shows his elbow, 5C shows his forearm, 5D shows his temple, 5E shows his ear, 5F shows his knee, and 5G shows his calf.

DX 6 and 6A are the tape and transcript of Mosiurchak's interview with Ninesh. Ninesh stated in the interview that earlier in the day he had been drinking at a bar with a friend, and the Respondent drove him and the friend from the bar to a restaurant. According to Ninesh, the Respondent was intoxicated at the time. While in the car, the Respondent and Ninesh got into an argument, and the Respondent started to hit Ninesh with a closed fist. The Respondent also slapped Ninesh's face. When they got out of the car, the Respondent grabbed Ninesh, slammed him against a glass storefront, and started to kick him. The Respondent proceeded to hit Ninesh for 15 minutes. Ninesh stated that he suffered a bruise to his left leg, left shoulder, and right elbow. He also suffered a

bump behind his ear, where he felt real pain. During the attack, Ninesh's friend called the police. The Respondent left the scene. Ninesh did not want the Respondent arrested.]

Disciplinary Case No. 84403/08

Mosiurchak testified that on August 8, 2008, he was assigned to pick up the Respondent from his residence after a second off-duty altercation with Ninesh. Mosiurchak conversed with the Respondent both in the car and at the command. Mosiurchak came to a determination that the Respondent was unfit for duty. He based this determination on his observation of the Respondent's glassy, watery eyes and the fact that the Respondent had a moderate odor of alcohol even though he had showered. He prepared a Supervisor's Fitness for Duty Report after approximately 15 minutes in the presence of the Respondent. [DX 12 is a copy of the report prepared by Mosiurchak. It indicates that Mosiurchak found the Respondent to be unfit for duty at 7:30 a.m. on August 8, 2008. Mosiurchak noted on the report that the Respondent's face color was normal, clothes were neat, attitude was cooperative, balance/coordination was steady, and speech was normal.]

On cross-examination, Mosiurchak testified that the Respondent sat in the front passenger seat during the ride to the command on the morning of August 8, 2008. They engaged in conversation during the drive. The Respondent was able to maintain conversation the entire time, and Mosiurchak could not recall the Respondent saying anything that was nonresponsive. The Respondent did not seem unsteady as he walked to the car, and he did not seem ill. Other than the glassy eyes and the smell of alcohol, there was nothing else to indicate intoxication.

Mosiurchak prepared the Supervisor's Fitness for Duty Report that Eriksen later signed. He stated it was an oversight that no box was checked off on the line labeled "Odor of Alcohol on Breath." He testified that he once had a problem with the Respondent when they worked together in the 103 Precinct, but that problem did not have any effect on his dealings with the Respondent on the day in question.

Police Officer Peter Paese

Disciplinary Case No. 82935/07

Paese, a seven-year member of the Department, is currently assigned to the 106 Precinct. While on patrol on April 28, 2007, he and his partner responded to an assault at [REDACTED], where they found a somewhat intoxicated Ninesh on the floor. Ninesh had cuts and bruises on his face and arm, and he was screaming in pain. According to Paese, it was obvious that Ninesh had just been assaulted. Ninesh told Paese that he was assaulted by the Respondent, but the Respondent was no longer there. Paese spoke with Ninesh's friend, Kallicharran, who was present at the scene. Paese could not recall if Kallicharran actually observed the incident, but Kallicharran also told him that Ninesh had been assaulted by the Respondent.

When asked on cross-examination if Ninesh's level of intoxication would have rendered him impaired had he been driving, Paese testified, "Well, probably impaired or even a little less. . . . I remember he had a little alcohol, but I don't remember how badly he was. He was just assaulted so that was the main emotion coming off of him..."

Sergeant Michael ChildsDisciplinary Case No. 82935/07

Childs, a 24-year member of the Department, is currently assigned to the Queens South Investigation Unit. He testified that on April 28, 2007, he interviewed a man named Paraboo, who had called 911 that day about an incident that occurred outside of his residence. Paraboo told Childs that he saw a car pull up and three people exit the vehicle. The driver of the vehicle proceeded to push another man to the ground, punch him, and kick him. In addition, Paraboo heard a man being pushed against a fence. Based on the time and location of the 911 call, Childs determined that Paraboo must have been referring to the incident involving the Respondent and Ninesh. As part of the investigation, Childs also interviewed Kallicharran. As far as Childs knows, Paraboo did not personally know anybody involved in the altercation.

On cross-examination, Childs testified that he was told by Kallicharran that he (Kallicharran), Ninesh, and the Respondent had all been drinking on the day of the incident.

Lieutenant Michael TarpeyDisciplinary Case No. 84403/08

Tarpey, a 20-year member of the Department, is currently assigned to the Queens South Investigations Unit. He testified that on December 18, 2008, he interviewed Ninesh about the August 8, 2008 incident with the Respondent. As far as Tarpey could tell, Ninesh was sober at the time of the interview. That same day, Tarpey conducted a telephone interview of Ninesh's sister, Nadira. Tarpey explained that he called Nadira as

soon as he got back to his office because he did not want to give Ninesh an opportunity to influence Nadira's statement.

[DX 11 and 11A are the tape and transcript of Tarpey's interview with Ninesh, dated December 18, 2008. Ninesh stated in the interview that there was a family wedding on August 8, 2008. At the wedding, Ninesh had one or two shots of whiskey. He did not see exactly how much the Respondent had to drink, but he believed the Respondent was intoxicated. According to Ninesh, the Respondent has a drinking problem. After the wedding, Ninesh's brother, Radesh, and his cousin, Ramish, became involved in a fist fight. Ninesh and the Respondent attempted to separate them. Because they would not stop fighting, Ninesh threatened to call the police. At that point, the Respondent grabbed the cell phone out of Ninesh's hand and punched him twice in the chest. Ninesh ran out of the house and called for an ambulance on a pay phone because he could not breathe and felt "a little bit of pain." Ninesh was taken to Jamaica Hospital. His doctor told him that he was all right, and he was released from the hospital the same day. When he got home, his sister gave him his cell phone back. The phone was broken.

DX 9 and 9A are the tape and transcript of Tarpey's telephone interview with Nadira from that same day. She stated in the interview that she was present in the room during Ninesh's altercation with the Respondent. Nadira observed Ninesh and the Respondent hit each other, and the Respondent took Ninesh's cell phone away after Ninesh said he was going to call the police. After Ninesh ran out of the room, the Respondent gave the cell phone to Nadira. Everybody, including Nadira, had been drinking that day, and both Ninesh and the Respondent were drunk at the time.]

On cross-examination, Tarpey testified that he never met Nadira in person.

Nobody conducted any sort of follow-up interview with Nadira.

Sergeant Donald Kipp

Disciplinary Case No. 84163/08

Kipp, a 16-year member of the Department, is currently assigned to the 103 Precinct. While working as the patrol supervisor on October 24, 2007, he responded to Mohammed's residence. While there, Mohammed told him that her boyfriend, the Respondent, threw her on the bed and threw the television on the ground, breaking the television. Mohammed replied negatively when Kipp asked her if she was injured or needed to go to the hospital. There was another woman present at the scene, but Kipp did not get this other woman's name. After notifying the duty captain of the incident, Kipp went to the Respondent's residence. The Respondent was not home, and Kipp waited approximately an hour and a half for the Respondent to return. The Respondent told Kipp that he had been out fishing. Kipp found the Respondent to be fit for duty at the time.

On cross-examination, Kipp testified that he used to work with the Respondent a long time ago. His conversation with Mohammed that night lasted approximately five minutes. He did not observe any injuries on her. According to Kipp, Mohammed had alcohol on her breath, as did the other woman at the scene. The other woman kept telling Mohammed, "You can't allow him to push you around anymore."

[DX 13 and 13A through D are the compact disc recording and transcripts of 911 calls from October 24, 2007. On the first call, Mohammed told the 911 operator that her

boyfriend came over, beat her up, and left. On the second call, Mohammed told the operator that her boyfriend was yelling at her with a knife in his hand. The third call consisted of a responding officer and the operator discussing the need for a patrol supervisor at the scene. On the fourth call, Mohammed told the operator that she wanted the responding police officers to leave because there was no longer a domestic violence situation going on. She also told the operator that she did to want to go to the command to talk to a supervisor about the incident.]

Sergeant Robert Behrman

Disciplinary Case No. 84403/08

Behrman, a six-year member of the Department, is currently assigned to the 107 Precinct. While working as the patrol supervisor on August 8, 2008, he responded to the scene of Ninesh's altercation with the Respondent. Behrman testified that Ninesh was disheveled and intoxicated at the time. Ninesh told Behrman that he and the Respondent had been drinking at a wedding and had gotten into a shoving match. The Respondent ended up punching Ninesh in the chest, and Ninesh was complaining of chest pains. Ninesh also told Behrman that he had to call for police assistance on a pay phone because the Respondent had taken his cell phone. Ninesh was taken by ambulance to Jamaica Hospital. Behrman was later assigned the Respondent's arresting officer.

On cross-examination, Behrman reiterated that Ninesh complained of chest pains, but Behrman did not observe any injuries. On redirect examination, Behrman stated that the Respondent was not present at the scene.

Police Officer Vincent CommissoDisciplinary Case No. 82046/06

Commisso, a 19-year member of the Department, is currently assigned to Police Service Area No. 7 (PSA 7). While on patrol on July 8, 2006, he and his partner, Police Officer Dominick Apuzzo, responded to a radio run on [REDACTED]. Approximately five minutes after the job came over the air, they arrived at the scene, where Commisso observed the Respondent and a young woman (previously identified as Latchman) standing on the sidewalk. Commisso asked Latchman if anything was going on. When Latchman responded negatively, Commisso drove away. Approximately a minute later, Commisso returned to the location to check in again on Latchman. This time Latchman told Commisso that she had been hit, and she informed him that the Respondent was an off-duty member of the service. At that point, Commisso got out of his vehicle and spoke with Latchman while Apuzzo spoke with the Respondent. Latchman told Commisso that she got a bump on her head when the Respondent threw keys onto the floor of the car as she was bending down to pick up her purse. Latchman also told Commisso that she did not think the Respondent hit her with the keys intentionally. Commisso did not mention anything about keys when he was interviewed about the case by IAB investigators because he only answered the questions that were asked of him, and he was never specifically asked what Latchman was hit with. He did not find either the Respondent or Latchman to be intoxicated. Commisso is a union delegate. He explained that his role as a delegate is to protect police officers.

On cross-examination, Commisso testified that he was not acting in his capacity as a union delegate during his interaction with the Respondent on the day of the incident.

Similarly, he was not acting in his capacity as a union delegate during his Official Department Interview about the incident. Instead, he was being questioned as a witness to an allegation against another member of the service. He stated that he answered every question in the interview truthfully.

Police Officer Dominick Apuzzo

Disciplinary Case No. 82046/06

Apuzzo, a 16-year member of the Department, is currently assigned to PSA 7. He testified that at approximately 5:00 a.m. on July 8, 2006, he and Commisso responded to a call for an assault in progress on [REDACTED]. Upon their arrival at the location, Apuzzo observed the Respondent and Latchman standing at the corner. The Respondent and Latchman told the officers that they had not called 911, and the officers started to drive away. Between 30 seconds to a minute later, the officers returned to where the Respondent and Latchman were standing. At that point, Latchman informed the officers that the Respondent was a member of the service. The officers got out of their vehicle, and the Respondent told Apuzzo that he had been arguing with Latchman because he wanted to end their relationship. According to Apuzzo, neither the Respondent nor Latchman seemed intoxicated. Back at the command, Apuzzo got a written statement from Latchman about the incident. [DX 2 is a supporting deposition, prepared by Latchman on July 8, 2006. Latchman wrote that the Respondent dragged her out of the car, choked her, and threw her telephone. The Respondent then struck her head, but she did not know if this strike was intentional. The incident caused bleeding from the corner of her head. She requested that the Respondent be sent to anger management and receive

help for an alcohol problem. She noted that she did not want the incident to affect his career or his position in the Department.]

On cross-examination, Apuzzo testified that he did not at first observe any visible injuries on Latchman. On redirect examination, however, he stated that he did notice injuries later on and took pictures of them. He specifically noticed a bump and bruise to the forehead with some blood coming out of it. [DX 1A through 1D are photographs taken of Latchman on July 8, 2006. 1A and 1B show Latchman's face taken from the front. 1C shows Latchman's face taken from the side. In all three of these pictures, a bruise on Latchman's forehead can be seen. 1D shows Latchman's wrist.]

Sergeant Saverio Fanelli

Disciplinary Case No. 82046/06

Fanelli, an 11-year member of the Department, is currently assigned to PSA 7. He testified that while working as the patrol supervisor on July 8, 2006, he responded to the scene of the altercation involving the Respondent on [REDACTED]. At the scene, Latchman told Fanelli that the Respondent had been violent lately. In addition, Fanelli noticed the knot on Latchman's head.

On cross-examination, Fanelli testified that he has no independent recollection of the incident. Fanelli found the Respondent to be fit for duty, and he did not recall the Respondent being uncooperative in any way.

On redirect examination, Fanelli testified that Latchman did not seem intoxicated.

[DX 3 is a stipulation that on March 30, 2007, the Respondent was found guilty after trial of harassment in the second degree.]

DX 4 and 4A are the tape and transcript of an interview that Captain Andy Johnson, Sergeant Patrick Kelly, and Sergeant Joe Lenovo conducted of Latchman on July 8, 2006. In the interview, Latchman stated that between 3:00 a.m. and 4:00 a.m. that day, the Respondent was driving her home from a wedding when an argument commenced. The Respondent got out of the car, came around to the passenger's side, and started to pull her out of the vehicle. As she was being pulled from the car, her cell phone fell to the ground and broke. She felt a strike to her head. She believed that the Respondent struck her head with his hand, but she did not know whether or not it was fully intentional. The Respondent then threw her purse over a fence, and she asked him to retrieve it. The Respondent went to get the purse when a police vehicle drove by. Latchman explained that she was about to ignore the situation until she realized that her head was bleeding. She also sustained a scratch to her wrist. Latchman ended up telling the police officers about the altercation. She declined medical treatment. According to Latchman, the Respondent has a bad temper and had been physically aggressive with her before. Although the Respondent had never hit her or caused injury before, he had a history of pushing her, grabbing her arms, and restraining her. Latchman stated that on the night of the incident the Respondent had at least three or four drinks within a three-hour period, but she did not think he was intoxicated.]

[The Assistant Department Advocate stated that the phone numbers he had for Latchman and Mohammed did not work. Investigators were sent to their homes, but nobody answered the door. In addition, they were mailed subpoenas, but neither of them ever acknowledged receipt. Similarly, the Department had no success with attempted

phone calls, home visits, and mailed subpoenas to Ninesh, Nadira, Paraboo, and Sandy Singh.]

The Respondent's Case

The Respondent testified in his own behalf.

Respondent Police Officer Roberto Bharat

Disciplinary Case No. 82046/06

The Respondent, a seven-year member of the Department, is currently assigned to the Military and Extended Leave Desk. He testified that on July 8, 2006, he and his girlfriend, Latchman, attended a wedding together. At approximately 3:00 a.m., he was driving Latchman to her home in the Bronx when they began to argue. The Respondent stated that he pulled the car over a few feet away from Latchman's building because Latchman was becoming irate and violent. The argument continued, and the Respondent attempted to explain to Latchman that their relationship was not going well and they needed to move on. Latchman refused to get out of the car, and she started to slap the Respondent and pull on his shirt and jacket. The Respondent moved away from Latchman, exited the vehicle, and opened the passenger's door. For five minutes, the Respondent instructed Latchman to get out of the car. Because Latchman refused to exit the vehicle, the Respondent took her by the hand and took her out of the car. They continued to argue on the street. At that point, the Respondent did not notice any injury to Latchman. The Respondent got back inside the car, where he found Latchman's bag. The Respondent took the bag and dropped it on the street by the car door. The bag was

open, though, and its contents fell out. The Respondent got out of the car and put the stuff back into the bag. The Respondent then handed the bag to Latchman and returned again to the car. When Latchman told the Respondent that her cell phone was still inside the car, the Respondent picked up the phone from the floor of the car and tossed it underhand to Latchman. Latchman was standing approximately 40 feet away, and the Respondent told her, "Catch the phone." The phone ended up hitting Latchman on the top of the head. The Respondent walked over to her to see if she was all right. Latchman was screaming, and the Respondent told her that it was an accident and he was sorry. At that point, the Respondent saw a bruise with a little blood, and he tried to wipe the blood away with his sleeve. Latchman responded by grabbing and biting him. The Respondent then pushed Latchman away, making contact with her shoulders. Latchman lost her balance. As the Respondent walked back to his vehicle, a patrol car passed by. Latchman told the police officers that she was all right, and they left. When the officers subsequently returned, the Respondent identified himself to them. A supervisor responded to the scene and the Respondent was brought to the 40 Precinct station house. He was charged with assault in the third degree. The assault charge was ultimately dismissed, but the Respondent was found guilty at trial of harassment and ordered to participate in a six-month anger management program. Latchman did not testify at the criminal trial, and she and the Respondent are currently engaged to be married. According to the Respondent, he has never taken any steps to prevent her from cooperating with the investigation of the incident. He testified that Latchman was intoxicated at the time of the incident, but he did not have anything to drink that night.

because he was driving. He stated that the incident, which lasted 30 or 45 minutes, took place in the dark because the sun had not yet risen.

Disciplinary Case No. 82935/07

The Respondent testified that he and his cousin, Ninesh, are not close very close but see each other at family functions. On April 28, 2007, he met Ninesh and a friend, Kallicharran, at a restaurant. When the Respondent arrived, Ninesh and Kallicharran had already been at the restaurant for approximately an hour and were drinking beers. The Respondent picked up food for his mother and left the restaurant. Ninesh and Kallicharran remained at the location. Approximately four or five hours later, Kallicharran called the Respondent and asked for a ride home. When the Respondent got back to the restaurant, Ninesh and Kallicharran were intoxicated. The Respondent testified that he himself did not consume any alcoholic beverages during the course of the day. While inside the car, the Respondent and Ninesh started to argue over a rumor that the Respondent had been talking about Ninesh behind his back. According to the Respondent, Ninesh became irate, started banging on the dashboard, and punched and cracked the windshield. Ninesh then got out of the car and told the Respondent that he wanted to fight. When the Respondent told Ninesh that he did not want to fight, Ninesh started banging on the hood of the car. At that point, the Respondent exited the vehicle because he was afraid that Ninesh was going to dent the hood. The Respondent and Ninesh continued their argument on the sidewalk. At one point, Ninesh tried to put his hands on the Respondent, but the Respondent pushed him away. When Ninesh approached the Respondent again, the Respondent could not get away and grabbed

Ninesh, becoming involved in a pushing match. When the Respondent tripped Ninesh, Ninesh fell to the ground on his knees. The Respondent testified that he then got back into his car and drove home. The Respondent stated that he never struck Ninesh with his hands or fist. The Respondent did not report the incident to the Department because Ninesh did not seem injured, and he did not feel it was necessary for the police to be involved. The Respondent was later summoned to the 107 Precinct station house, where he was arrested for assault. As far as he knows, Ninesh never met with the district attorney. The criminal case against him was ultimately dismissed.

Disciplinary Case No. 83737/08

The Respondent testified that he was out sick with a broken ankle in July 2007. On July 20 and July 24, he left his residence to get medication without obtaining prior authorization. He explained that before leaving home he made multiple telephone calls to the sick desk, but he did not succeed in reaching anybody. On both occasions, he tried calling the sick desk for an hour or two, but the telephone just rang or was busy. When he left home, he was aware that he was violating Department guidelines. On November 8, 2007, he was still out sick for his ankle. On that day, he spoke to the sick desk to request permission to leave his residence. His request was denied, but he left home anyway. He explained that he needed to go to his sister's house because his nephew was sick and his sister needed help watching his niece.

Disciplinary Case No. 84163/08

The Respondent testified that on October 24, 2007, he and a friend went to Mohammed's apartment to see his friend's sister, Sandy Singh. When the Respondent's friend started to argue with Sandy, Mohammed became upset. Mohammed picked up a knife and ordered everybody out of her house. The Respondent stated that when it looked like Mohammed was approaching with the knife, he grabbed her wrists. Mohammed struggled a little, so the Respondent threw her onto the bed. The Respondent then took the knife from her and threw it in the kitchen sink. The Respondent and his friend then left. He explained that he did not report the incident to the Department because he did not notice any injury to Mohammed, and he did not feel it was necessary for the police to be involved. He was later contacted by the Department about the incident, but he was not charged with any crime. He has had no further contact with Mohammed. The Respondent stated that he had not been drinking that day.

Disciplinary Case No. 84403/08

The Respondent testified that he attended a cousin's wedding on August 8, 2008. He arrived at the wedding at approximately 7:00 p.m. and consumed three or four drinks during the course of the night. After the wedding, the Respondent and Ninesh became involved in an argument because Ninesh refused to move his car, which was blocking the Respondent from leaving. Ninesh, who was intoxicated at the time, became irate and seemed to swing at the Respondent with a cell phone in his hand. The Respondent grabbed Ninesh's hand, removed the cell phone, and gave it to Ninesh's sister. One of Ninesh's brothers then moved the car, and the Respondent left the scene. According to

the Respondent, at no point during the argument did he intentionally punch or kick Ninesh or try to prevent Ninesh or anybody else from calling the police. He explained that he did not report the incident to the Department because it was just a family argument and no one was hurt. Two or three hours later, the Respondent was summoned to the 107 Precinct station house. He stated that after a conversation with a captain that lasted two seconds, he was deemed unfit for duty. He was also arrested, but Ninesh never appeared in criminal court, and the criminal case was ultimately dismissed. The Respondent has successfully completed Department-ordered inpatient and outpatient alcohol treatment programs.

Disciplinary Case No. 84877/09

The Respondent testified that he was required to go to a counseling session on January 2, 2009. At the time, his duty status was suspended with pay, and he did not have a parking plaque. Because he was running late and could not find a parking spot, he put a duplicate parking plaque that he had made himself on display on his windshield. He explained that he had unsuccessfully searched for a parking spot for 30 or 45 minutes. He further explained that had he been late for the session, he would have been deemed uncooperative and been discontinued from the counseling program.

Disciplinary Case No. 83737/08

On cross-examination, the Respondent testified that on July 20, 2007, he spoke to the sick desk and requested permission to go to Key Food. When he was then asked if the testimony that he provided on direct examination about that date was incorrect, the

Respondent replied, "I really don't remember exactly where it was I was going." The Respondent reiterated that on November 8, 2007, he left home even though he was denied permission from the sick desk. He subsequently conceded, however, that in previous statements he claimed that he had attempted twice to call the sick desk that night but did not speak to anyone because the phone was busy.

Disciplinary Case No. 84877/09

The Respondent testified that when he went to his counseling sessions, he usually found parking within ten or 20 minutes. On January 2, 2009, he got stuck in traffic and was running late. He believes he called the Counseling Unit to let them know that he might be late. He thought he parked that day in a legal spot, but he put the duplicate plaque on his windshield just in case he was too close to a fire hydrant. The Respondent explained that that same morning he made the duplicate plaque by copying a 2007 plaque and changing the year that was written on it to 2008. He knew that he was not supposed to possess the plaque.

Disciplinary Case No. 82046/06

The Respondent testified that Latchman had been drinking heavily on July 8, 2006. In a previous statement, the Respondent claimed that a metal watch he was wearing may have caused the lacerations that Latchman sustained to her wrist that day. He stated that when he returned to the car and found Latchman's bag, he got out of the car and slid the bag over the car hood. Although Latchman had begun to sober up by that point, she was unable to catch the bag. The bag fell to the ground, and some of its

contents rolled under a nearby fence. When the police drove by the scene for the first time, the cell phone had not yet been thrown. The Respondent explained that he threw the telephone to Latchman because she was "very physical like grabbing and stuff," and he did not want to go near her. The Respondent reiterated that Latchman bit him, but he never reported that part of the incident to the police. He stated that he sought medical attention after he was released from Central Booking, but he does not have any record of his hospital visit. He further stated that he took photographs of his injury, but he does not know where those pictures are. According to the Respondent, Latchman later told him that she filed the criminal complaint against him because she believed at the time that he had thrown the telephone on purpose. He testified that he never choked Latchman, and Latchman's allegation of choking in her supporting deposition was not truthful.

Disciplinary Case No. 82935/07

The Respondent testified that he might have had three or four beers when he went to the restaurant to pick up food for his mother on April 28, 2007. He considers Ninesh to be a heavy drinker. The Respondent did not say anything in his Official Department Interview about Ninesh banging on the hood of the car. He stated that at no point during the incident did he push Ninesh against a glass storefront. He conceded that his testimony on direct examination was not accurate because he at one point started to drive away from the scene but then realized that he had left behind his cell phone. He then returned to the scene and found his cell phone on the ground approximately ten feet away from Ninesh. It was when the Respondent got out of his car to retrieve the phone that Ninesh attacked him again, leading him to trip Ninesh with a sort of leg sweep.

Kallicharran was standing approximately five feet away throughout the course of the incident. The Respondent testified that he did not initiate the argument with Ninesh that day, and he did not punch Ninesh while they were still in the car. At no point did Ninesh succeed in punching or kicking the Respondent. The fact that Ninesh cracked the windshield made the Respondent a victim of criminal mischief. The Respondent stated that in hindsight he realizes that he should have notified the Department.

Disciplinary Case No. 84163/08

The Respondent testified that on October 24, 2007, he was in Mohammed's apartment for approximately five minutes before the Singh siblings started to fight. In a previous statement, however, the Respondent claimed that they were already wrestling when he arrived. The Respondent stated that in hindsight he realizes he should have left the premises at that point. He also realizes that he should have reported the incident to the Department. The knife that Mohammed held was eight-inches long. The Respondent believed, though, that she was only using the knife as a scare tactic and that she did not plan on actually using it against anybody.

Disciplinary Case No. 84403/08

The Respondent testified that on August 7, 2008, he consumed three or four beers within a period of an hour or two. Ninesh and other people at the party had been drinking heavily and fighting. The Respondent was at the party for approximately a half hour.

In reference to the altercations that occurred on July 8, 2006, April 28, 2007, October 24, 2007, and August 8, 2008, the Respondent agreed that it was he who was the victim of criminal activity.

FINDINGS AND ANALYSIS

Disciplinary Case No. 82046/06

The Respondent stands charged with, while intending to cause physical injury, causing a bleeding laceration to Latchman by striking her in the face with a cell phone and/or his hands. He also stands charged with striking Latchman with the intent to harass, annoy, or alarm her. For both specifications, he was charged under both the Patrol Guide and the New York State Penal Law (harassment in the second degree and assault in the third degree). The Respondent testified that as he was driving Latchman home from a wedding, they began to argue about the state of their relationship. He claimed that an intoxicated Latchman became irate and violent and refused to get out of the car when he pulled over to drop her off. According to the Respondent, she slapped him and pulled on his shirt and jacket. When he got out of the car and opened the passenger's door to let her out, Latchman still refused to exit. The Respondent claimed that he had to take her by the hand and remove her from the car. They continued to argue on the street. When the Respondent got back in the car, he saw that Latchman had left her bag. He either dropped the bag on the street by the car door or slid the bag over the car hood. In any case, the contents of the bag fell out, and the Respondent gathered the contents for Latchman. Some of the contents rolled under a nearby fence. Because Latchman also left her cell phone in the car, the Respondent tossed it underhand in her

direction. He explained that he tossed it to her because he did not want to get near her. The phone ended up hitting her on the top of the head, causing her to bleed a little. According to the Respondent, when he approached Latchman to see if she was all right, she grabbed him and bit him. The Respondent pushed Latchman away, causing her to lose her balance. In addition to the bruise to her head, Latchman also sustained scratches to her wrist. In a previous statement, the Respondent explained that the scratches may have been caused by a metal watch that he was wearing that day.

Latchman painted a very different version of the altercation when she was interviewed on the day of the incident. In the interview, Latchman stated that the Respondent initiated physical contact when he pulled her out of the car. While he was pulling her, her cell phone fell to the ground and broke. She also felt a strike to her head. She believed that the Respondent struck her head with his hand, but she did not know whether or not it was fully intentional. The Respondent then threw her purse over a fence and she asked him to retrieve it. The Respondent went to get the purse when a police vehicle drove by. Latchman explained that she was about to ignore the situation until she realized that her head was bleeding.

Latchman also prepared a supporting deposition that day. Latchman wrote in the deposition that the Respondent dragged her out of the car, choked her, and threw her telephone. The Respondent then struck her head, but she did not know if this strike was intentional. The incident caused bleeding from the corner of her head. She requested that the Respondent be sent to anger management and receive help for an alcohol problem. She noted that she did not want the incident to affect his career or his position in the Department.

An assault charge against the Respondent was ultimately dismissed in criminal court, but he was found guilty of harassment and ordered to participate in a six-month anger management program. Latchman is currently engaged to be married to the Respondent, and she did not appear to testify at this proceeding. This Court, nevertheless, for several reasons finds her version of the incident to be more credible than the one presented by the Respondent. First, it would be an odd thing for Latchman to state that she did not want the incident to affect the Respondent's career or his position in the Department if she had been lying or exaggerating for the purpose of getting the Respondent in trouble. Similarly, in both her interview and supporting deposition, Latchman expressed uncertainty about whether or not the Respondent struck her intentionally. This is not something you would likely see had Latchman been interested in exaggerating the severity of her experience. Second, in conflict with the Respondent's version of the altercation, none of the three members of the service who responded to the scene (Commisso, Apuzzo, and Fanelli) believed that Latchman was intoxicated at the time. Third, while the Respondent claimed that he was bitten by a violent Latchman, he never reported getting bitten to the police. Similarly, he claimed that he sought medical attention and took pictures of his injury, but he was unable to present at trial any sort of medical record or photographic evidence in support of his allegation.

Finally, the strongest corroboration of Latchman's version of the incident was provided at trial by Jackson, an eyewitness to the altercation. Jackson, who lives in the building in front of which the altercation took place, stated that she had a clear view of the incident. Moreover, there was no indication that she had motive to testify in favor of one party over the other. According to Jackson, she saw Latchman fall out of the car.

She then observed the Respondent throw Latchman against a fence, grab her by the throat, and punch her in the face. At one point, the Respondent hugged Latchman, and Latchman slapped and pushed him away. Jackson stated that she saw Latchman throw something over the fence and the Respondent climb over to retrieve it. In her credible, impartial testimony, Jackson's descriptions of the Respondent's acts of aggression (the grabbing of Latchman by the throat and punching her in the face) and positioning (his climbing over the fence to retrieve something) were more consistent with Latchman's hearsay statement than with the Respondent's version of the encounter.

Based on the foregoing, the Court finds the Respondent Guilty of harassing Latchman and also finds him Guilty of the Patrol Guide section with which he has been charged. Patrol Guide section 203-10, Page 1, Paragraph 5 stands for "conduct prejudicial to good order, efficiency or discipline of the Department" being prohibited conduct. While the acts committed by the Respondent on July 8, 2006 clearly fall under this section, the Court cannot find him guilty of assault in the third degree. According to New York State Penal Law Section 120.00(1), a person is guilty of assault in the third degree when "with intent to cause physical injury to another person, he causes such injury to such person." In Section 10.00(9), "physical injury" is defined as "impairment of physical condition or substantial pain." Without live testimony from Latchman or medical records, the Court is not in a position to analyze the severity of Latchman's injuries, and it is thus unable to determine whether the Respondent's misconduct rose to this level of criminality. Thus, the Respondent is found Guilty of engaging in conduct prejudicial to the good order, efficiency and discipline of the Department for both causing a bleeding laceration to Latchman by striking her in the face with a cell phone and/or his

hands and for striking Latchman with the intent to harass, annoy, or alarm her. He is also found Guilty of harassment in the second degree but Not Guilty of assault in the third degree.

Disciplinary Case No. 84163/08

The Respondent stands charged with engaging in conduct prejudicial to the good order, efficiency and discipline of the Department by engaging in a physical altercation with Mohammed. He also stands charged with failing to promptly notify the desk officer, precinct of occurrence, of the incident. The Respondent testified that Mohammed became upset when an argument commenced in her apartment between his friend and his friend's sister. According to the Respondent, Mohammed picked up an eight-inch-long knife and ordered everybody out of her house. The Respondent claimed that when it looked like Mohammed was approaching with the knife, he grabbed her wrists. Because Mohammed struggled a little, the Respondent threw her onto the bed. He then took the knife from her, threw it into the kitchen sink, and left the premises. He explained that he did not report the incident to the Department because he did not notice any injury to Mohammed, and he did not feel it was necessary for the police to be involved.

In contrast to the Respondent's version of the incident, Mohammed told Eriksen that the Respondent became upset because there was another man present in her apartment. She told both Eriksen and Kipp that the Respondent threw her onto the bed and knocked over her television. She told Kipp that her television was broken as a result of the incident. In a 911 call, she told the operator that her boyfriend came over and beat

her up. In another 911 call, she told the operator that her boyfriend was yelling at her with a knife in his hand.

Like Latchman, Mohammed did not appear to testify at trial. Unlike Latchman's case against the Respondent, the Department did not present any evidence to corroborate Mohammed's allegations. Mohammed alleged that the Respondent beat her up and broke her television, but there was no evidence presented to support these claims. Similarly, no witness to the incident came forward to testify or even provide an out-of-court statement indicating that the altercation may have occurred as Mohammed said it did. For these reasons, the Court finds that the Department failed to prove by a preponderance of the credible evidence that the altercation was any different from the way that the Respondent described it. The Court must, therefore, accept the Respondent's claim that he became involved in a physical struggle only because an upset Mohammed was approaching him with a knife in her hand.

The Respondent was, nevertheless, obligated to report the incident to the Department. Based on his testimony, the Respondent was not only involved in a physical altercation with Mohammed, but Mohammed's actions toward him that day, if the Respondent is to be believed, also constituted a crime which would have required some form of police action.

Based on the foregoing, the Respondent is found Not Guilty of engaging in conduct prejudicial to the good order, efficiency and discipline of the Department by engaging in a physical altercation with Mohammed, but he is found Guilty of failing to promptly notify the desk officer, precinct of occurrence.

Disciplinary Case No. 82935/07

The Respondent stands charged with causing physical injury to Ninesh; striking Ninesh with the intent to harass, annoy, or alarm him; and failing to request the response of the patrol supervisor after being involved in an unusual police occurrence on April 28, 2007. The Respondent testified that he and Ninesh began to argue while in the car together that day. According to the Respondent, an intoxicated Ninesh became irate, banged on the dashboard, and cracked the windshield by punching it. Ninesh then got out of the car and challenged the Respondent to a fight. The Respondent told Ninesh that he did not want to fight. The Respondent stated that he did get out of the car, though, because Ninesh was banging on the car hood and he was afraid that the hood would get dented. The Respondent testified that when Ninesh tried to put his hands on him, he pushed Ninesh away. When Ninesh approached again, the Respondent could not get away and grabbed Ninesh, becoming involved in a pushing match. At one point, the Respondent got back in the car and started to drive away. He returned to the scene, though, when he realized that he had left behind his cell phone. According to the Respondent, when he got out of the car to retrieve his phone, Ninesh attacked him again. The altercation ended when the Respondent brought Ninesh to his knees by performing a sort of leg sweep on him. The Respondent then got back in his car and drove off. The Respondent explained that he did not report the incident to the Department because Ninesh did not seem injured, and he did not feel it was necessary for the police to be involved. The Respondent was later arrested, but Ninesh never met with the district attorney and the criminal case was ultimately dismissed. According to the Respondent,

he never struck Ninesh with his hands or fist. He agreed that the fact that Ninesh cracked the windshield made him a victim of criminal mischief.

In contrast to the Respondent's version of the incident, Ninesh told Mosiurchak that the Respondent started to strike him with a closed fist while they were still inside the car. The Respondent also slapped his face. Ninesh stated that when they got out of the car, the Respondent grabbed him, slammed him against a glass storefront, kicked him, and proceeded to hit him for 15 minutes. Ninesh complained of bruises to his leg, shoulder, and elbow. He also complained of a bump behind his ear, where he felt pain.

Ninesh did not appear to testify at trial, but the Department submitted photographs of Ninesh's face, arm, and leg. The Department also submitted the audio recordings of three 911 calls made about the incident. In the first call, a man told the operator that he saw two men fighting. One man pushed the other down to the ground. In the second call, a woman told the operator that she saw one man beat up another man and throw him on the side of the road. In the third call, a man requested that an ambulance be sent to the location to aid an injured man. Childs testified that he was told by Paraboo, one of the 911 callers, that he observed the driver of the vehicle push one of the passengers to the ground, punch him, and kick him. Paraboo also told Childs that he heard a man being pushed against a fence. Paese testified that he was told by Killacharran, a witness to the incident, that Ninesh had been assaulted by the Respondent.

The case concerning the Respondent's dispute with Latchman shows that a complainant need not appear at trial for a determination of guilt to be made. In the case involving the April 28, 2007 dispute with Ninesh, however, the evidence presented by the Department does not successfully convince the Court that Ninesh's version of the

incident was any more likely than the one described by the Respondent. It is not disputed that an intoxicated Ninesh was involved in a physical altercation with the Respondent and sustained some bruising. The Court cannot tell, though, from its review of the photographs and 911 calls whether (as Ninesh claimed) the Respondent initiated physical contact and was the primary physical aggressor, or (as the Respondent claimed) he was merely acting in self-defense. Without further corroboration, there are simply too many unanswered questions for the Court to be convinced by a preponderance of the credible evidence that the incident took place as Ninesh alleged. (Questions such as: What kind of view did the 911 callers have? Did the 911 callers observe the altercation from its inception? Was the kick observed by Paraboo actually the leg sweep described by the Respondent?) As for the photographs of Ninesh's injuries, the Court would expect to see much more severe injury had (as Ninesh claimed) the Respondent waged an undefended assault against him for 15 minutes.

Even assuming that the Respondent was acting in self defense, however, he was still obligated to report the incident to the Department. After all, based on his testimony, the Respondent was not only involved in a physical altercation with Ninesh, but Ninesh's actions that day also constituted a crime.

Based on the foregoing, the Respondent is found Not Guilty of wrongfully and without just cause causing physical injury to Ninesh. He is also found Not Guilty of striking Ninesh with the intent to harass, annoy, or alarm him, but he is found Guilty of failing to request the response of the patrol supervisor.

Disciplinary Case No. 84403/08Specification No. 3

The Respondent stands charged with consuming alcohol to the extent that he was unfit for duty. The Respondent testified that he attended a family wedding and consumed three or four beers within a period of an hour or two. Both Mosiurchak and Eriksen determined that the Respondent was unfit for duty and recorded their findings on a Supervisor's Fitness for Duty Report. Mosiurchak noted on his report that the Respondent had glassy/watery eyes and a moderate odor of alcohol on his breath. While Eriksen also noted on his report that the Respondent had glassy/watery eyes, there was no box checked on his report on the line labeled "Odor of Alcohol on Breath." Eriksen testified that this was a careless oversight since the Respondent was, in fact, giving off a strong odor of alcohol. Because no evidence was presented that Mosiurchak or Eriksen had motive to fabricate this allegation of misconduct against the Respondent, the Court finds the Respondent Guilty of this Specification.

Specification Nos. 1, 2, 4, 5, 6, and 7

The Respondent stands charged with causing physical injury to Ninesh; subjecting, attempting to subject, or threatening to subject Ninesh to physical contact with the intent to harass, annoy, or alarm him; engaging in conduct prejudicial to the good order, efficiency and discipline of the Department by engaging in a physical altercation with Ninesh and taking Ninesh's cell phone in order to prevent him from calling 911; failing to request the response of the patrol supervisor after being involved in

an unusual police occurrence; and failing to remain at the scene of the August 8, 2008 incident.

The Respondent testified that he and Ninesh became involved in an argument because Ninesh refused to move his car, which was blocking the Respondent from leaving. The Respondent stated that an intoxicated Ninesh became irate and seemed to swing at him with a cell phone in his hand. The Respondent grabbed Ninesh's hand, removed the phone, and gave it to Ninesh's sister, Nadira. One of Ninesh's brothers then moved the car, and the Respondent left the scene.

In contrast to the Respondent's version of the incident, Ninesh told the operator in 911 calls he made that day that he had been beaten up by the Respondent and that the Respondent took his cell phone when he (the Respondent) realized that he (Ninesh) was going to call the police. Ninesh told Behrman the same day that he and the Respondent had gotten into a shoving match and that the Respondent punched him in the chest and took his cell phone. He also told Eriksen that the Respondent punched him in the chest, causing pain to his chest. In a December 2008 interview, Ninesh told Tarpey that when he threatened to call the police because other people at the party were fighting, the Respondent grabbed the cell phone out of his hand and punched him twice in the chest. Ninesh then ran out of the house and called for an ambulance on a pay phone because he could not breathe. Ninesh was informed at the hospital that he was all right, and he was released the same day. Also in December, Tarpey conducted a telephone interview with Nadira. Nadira told Tarpey that she observed Ninesh and the Respondent hit each other and that the Respondent took Ninesh's cell phone away after Ninesh said he was going to call the police.

As with the other case initiated by Ninesh, the Court finds that the Department failed to prove this hearsay case by a preponderance of the credible evidence. Once again, it went undisputed at trial that an intoxicated Ninesh was involved in a physical altercation with the Respondent, but there is no way for the Court to know if the Respondent was the primary physical aggressor or merely acting in self defense. If anything, this case is even weaker than Ninesh's other case. Unlike the April 2007 case, the Department did not provide any evidence of injury whatsoever (no photographs or records from Ninesh's hospital visit). Even Behrman, the Department own witness, testified that he did not observe any injuries when he saw Ninesh on the day of the incident. In addition, unlike the April 2007 case, the only 911 calls about the incident were made by Ninesh himself, and the only witness to provide a statement was Ninesh's sister, hardly an impartial spectator. Furthermore, Nadira's statement was given over the telephone four months after the incident, which means that she had ample opportunity to discuss the altercation with her brother, and nobody from this Department ever had the chance to examine her demeanor.

Even assuming that the Respondent was acting in self defense, however, he was still obligated to report the incident to the Department and remain at the scene until on-duty police personnel arrived.

Based on the foregoing, the Respondent is found Not Guilty of wrongfully and without just cause causing physical injury to Ninesh; subjecting, attempting to subject, or threatening to subject Ninesh to physical contact with the intent to harass, annoy, or alarm him; and engaging in conduct prejudicial to the good order, efficiency and discipline of the Department by engaging in a physical altercation with Ninesh and taking

Ninesh's cell phone in order to prevent him from calling 911. The Respondent is found Guilty of failing to request the response of the patrol supervisor and failing to remain at the scene of the incident.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Department on July 2, 2001. Information from his personnel record that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Under Disciplinary Case No. 84877/09, the Respondent has pleaded Guilty to making and displaying a duplicate Department parking plaque. He testified that he copied a 2007 parking plaque and changed the year that was written on it to 2008. That day, he was running late for a counseling session and could not find a parking spot. After unsuccessfully looking for a legal spot for 30 or 45 minutes, he parked in a spot that may have been too close to a fire hydrant and displayed the duplicate plaque on the windshield. The Respondent explained that had he been late for the counseling session, he would have been deemed uncooperative and been dismissed from the counseling program.

Under Disciplinary Case No. 83737/08, the Respondent has also pleaded Guilty to being out of residence without permission while on sick leave on July 20, July 24, and August 8, 2007. The Respondent provided conflicting versions of his actions on those days. On direct examination, he testified that on July 20 and July 24, 2007 he made

multiple telephone calls to the sick desk to request permission to go pick up medication. According to the Respondent, he left his residence on those days without obtaining prior authorization only because he was unable to reach anybody at the sick desk, as the telephone at the sick desk just rang or was busy. On cross-examination, though, the Respondent changed his story, testifying that on July 20, 2007 he actually spoke to the sick desk before leaving home and requested permission to go to Key Food.

As for the third occasion, the Respondent testified on direct examination that on November 8, 2007 he went to his sister's house to watch his niece even though the sick desk had denied his request to leave home. He went on to concede on cross-examination, however, that in previous statements he claimed that he had attempted twice to call the sick desk that day but did not speak to anyone because the phone was busy.

Because the Respondent could not coherently explain what he did on the dates in question, the Court does not consider his testimony to be mitigating in any manner. Perhaps the only thing that the Respondent did make clear to the Court is that on at least one occasion he left home after being explicitly informed by the sick desk that he did not have permission to do so.

In addition to the misconduct to which the Respondent has pleaded Guilty, he has been found Guilty after trial of engaging in conduct prejudicial to the good order, efficiency or discipline of the Department, in that he caused a bleeding laceration to his girlfriend by striking her in the face; striking his girlfriend with the intent to harass, annoy, or alarm her (harassment in the second degree); failing to promptly notify the desk officer, precinct of occurrence, after being involved in a police incident; consuming alcohol to the extent that he was unfit for duty; neglecting to request the response of the

patrol supervisor after being involved in an unusual police occurrence on two occasions; and failing to remain at the scene of the incident when feasible.

This Court finds that the Respondent's attack on Nadia Latchman, in and of itself, to be serious misconduct. Moreover, the multiple specifications concerning his failure to notify the Department after being involved in a police occurrence is particularly troublesome to this Court. Certainly the responsibility to notify the Department is something that the Respondent should have been aware before the first occurrence through his training and knowledge of the Patrol Guide. But prior to the incident of August 8, 2008, the Respondent had been served twice with specifications for failure to notify the Department in earlier incidents so he was amply aware of this requirement and its importance.² In spite of this prior specific notice, the Respondent, during that August 8, 2008 incident, not only failed to report the matter but left the scene without waiting for a police response as required by the Patrol Guide.

The importance of the self-reporting of unusual occurrences is a significant aspect of this Department's effort to insure discipline and responsible police behavior. Conversely, the failure to notify the Department has the potential to deprive the Department of the opportunity to promptly investigate the serious allegations of misconduct. Leaving the scene ultimately compounds the problem.

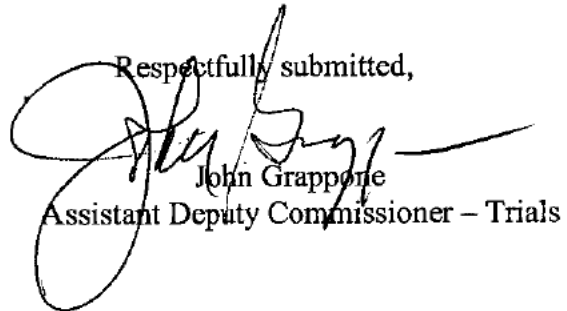
The Respondent, therefore, over the course of the last three years, has repeatedly exhibited bad judgment and a blatant disregard for the rules of the Department that he is entrusted to comply with. Consequently, this Court does not find him to possess the type

² The Respondent was served on June 26, 2008 for failing to notify the desk officer of his altercation with Mohammed, and he was served on July 31, 2008 for failing to request the response of the patrol supervisor after his first altercation with Ninesh.

of character and discipline that is basic and necessary to justify the trust that the Department places in its uniform members of the service.

Based on the foregoing, it is recommended that the Respondent be DISMISSED from his employment with the New York City Police Department.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'John Grappone', is written over the typed name and title.

John Grappone

Assistant Deputy Commissioner – Trials



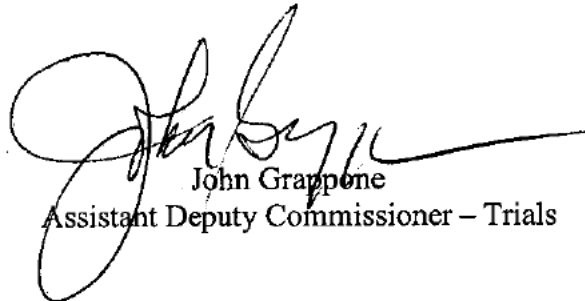
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ROBERTO BHARAT
TAX REGISTRY NO. 927925
DISCIPLINARY CASE NOS. 82046/06, 82935/07, 83737/08
84163/08, 84403/08 & 84877/09

In 2006 and 2007, the Respondent received an overall rating of 3.5 “Highly Competent/Competent” on his annual performance evaluation. In 2005, he was rated 3.0 “Competent.” He has received one medal for Meritorious Police Duty. [REDACTED]

[REDACTED]. In July 2008, the Respondent was placed in Special Monitoring – Level III due to poor performance. He has no prior formal disciplinary record.

For your consideration.


John Grappone
Assistant Deputy Commissioner – Trials